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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Place Vendome Holding Co., Inc.

Serial No. 76393570

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Place Vendome Holding Co., Inc.

Michael H. Kazazian, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Managing Attorney).

Before Walters, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Place Vendome Holding Co., Inc. has filed an
application to register on the Principal Register the mark
STRATFORD HOME ACCENTS for the goods identified below.¹ The
application includes a disclaimer of HOME ACCENTS apart from
the mark as a whole.

International Class 11: "decorative home
furnishings, namely, lamps."

¹ Serial No. 76393570, filed April 10, 2002, based on use of the mark in
commerce for all identified goods, claiming first use and use in
commerce as of September 26, 2001 for all identified goods.

International Class 20: "decorative home furnishings, namely, pillows and shelves."

International Class 24: "decorative home furnishings, namely, fabric table runners, curtains and curtain tie-backs."

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the mark STRATFORD, previously registered for "upholstered furniture,"² that, when used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.³

Applicant has appealed. Both applicant and the examining attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The examining attorney contends that the marks are confusingly similar because the sole difference between the marks is the merely descriptive HOME ACCENTS portion of applicant's mark; that there is no compelling evidence that STRATFORD is weak in relation to the goods involved in this case; that the examining attorney's evidence of third-party registrations of marks registered for the goods listed in

² Registration No. 0944672 issued October 10, 1972, to Mohasco Industries, Inc., in International Class 20. The current owner of record is Caye Upholstery, LLC. The registration has been renewed for a term of ten years from October 10, 2002. Sections 8 (six and ten year) and 15 affidavits have been accepted and acknowledged, respectively.

³ The examining attorney's final refusal included a refusal based on a requirement for an amendment to the identification of goods. That refusal was withdrawn upon reconsideration following applicant's submission of an amended identification of goods, as listed above.

the application and registration establish that the goods may emanate from a single source; and that applicant's goods may be used with or in relation to registrant's furniture.

In support of his position, the examining attorney submitted copies of third-party registrations that included, among the listed goods, the registrant's goods and several of applicant's identified goods. In particular, there are third-party registrations for marks for goods including "furniture," which would encompass upholstered furniture, and pillows (fifteen registrations) and/or shelves (five registrations) and/or fabric table runners (six registrations) and/or curtains (six registrations) and/or lamps (eight registrations).⁴

Applicant contends that, regardless of the descriptiveness of the HOME ACCENTS portion of its mark, this phrase sufficiently distinguishes the mark in its entirety from the registered mark; that STRATFORD is a weak term that has been registered by a number of third-parties in connection with goods in the home furnishings field and, thus, is entitled to only a limited scope of protection; that the goods are different; that the mere fact that both applicant's and registrant's goods may fall under the same broad category of home furnishings is insufficient for a

⁴ There are a significant number of additional registrations that include, in the identification of goods "furniture," but the term is limited to items that are not "upholstered furniture." We find these registrations irrelevant and have not considered them.

conclusion that the goods are related; and that "the fact that some companies may produce several lines of different furniture products is not in any way pertinent to the marks at issue." (Brief, p. 9.)

In support of its position, applicant submitted copies of eight third-party registrations and three third-party applications for marks that include the term STRATFORD for a variety of goods;⁵ and copies of numerous third-party registrations that include applicant's goods, either individually or together, but do not include upholstered furniture.⁶

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours & Co.*,

⁵ Applicant incorrectly categorizes the goods identified therein as "household furnishings." However, we disagree and note that the goods identified by the noted STRATFORD registrations include pianos, wooden doors, cloth products sold to the lodging and hospitality industry to distribute to customers, and factory-built homes. These registrations are of little persuasive value. Further, the applications are of little persuasive value because they are evidence only of the fact that they have been filed. Similarly, the few registrations that do include goods that could be categorized as "home furnishings" are of limited persuasive value in any event because they are not evidence that the marks therein are in use and because it is well settled that each case must be decided on its own facts. *In re Pennzoil Products Co.*, 20 USPQ2d 1753, 1758 (TTAB 1991); and *In re Inter-State Oil Co., Inc.*, 219 USPQ 1229, 1231 (TTAB 1983).

⁶ We acknowledge that it is difficult to prove a negative, i.e., that the goods are not related. However, the mere fact that third-party registrations that include applicant's goods, but not registrant's goods, does not establish that the goods are not related. We note that it is the examining attorney's burden to establish that the goods are sufficiently related that, in view of the marks, confusion as to source is likely.

476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein. The factors deemed pertinent in this proceeding are discussed below.

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v.*

Scott Paper Co., 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In this case, applicant has incorporated the registered mark, STRATFORD, in its entirety in its mark, STRATFORD HOME ACCENTS. Further, the term STRATFORD appears to be arbitrary as applied to the goods of applicant and registrant; it is the first word in applicant's mark; and it is followed by the words HOME ACCENTS, which is admittedly descriptive, in view of applicant's disclaimer, in relation to applicant's goods.⁷ These factors lead us to conclude that STRATFORD, which is identical to the registered mark, is the dominant portion of applicant's mark; and that, considered in their entirety, the marks are substantially similar in sound, appearance, connotation and commercial impression.

Turning to consider the goods involved in this case, we note that the question of likelihood of confusion must be

⁷ In particular, applicant's goods are decorative accessories, or "accents," for the home.

determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

It is true that registrant's goods and applicant's goods are distinctly different products. However, the question is not whether purchasers can differentiate the goods themselves but rather whether purchasers are likely to confuse the source of the goods. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Thus, it is not necessary that the goods of the applicant and registrant be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate

from or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

We consider each class separately. Although third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, such registrations nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, *supra*; *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

With respect to applicant's goods in International Class 20, we find that the evidence of fifteen third-party registrations including both furniture, which encompasses upholstered furniture, and pillows is sufficient to establish that, if identified by confusingly similar marks, confusion as to source is likely.⁸

With respect to applicant's goods in International Class 11, lamps, and its goods in International Class 24, fabric table runners and curtains,⁹ we find the evidence of

⁸ While applicant's goods in this class include shelves, in view of our conclusion regarding pillows, it is unnecessary to consider the relationship between upholstered furniture and shelves.

⁹ There is no evidence specifically regarding curtain tie-backs, although it is reasonable to conclude that such products, used with curtains, are closely related to curtains. However, as noted with

a relationship to upholstered furniture less compelling. However, all of applicant's goods are home furnishings that are used together with upholstered furniture, and we find the number of third-party registrations sufficient to establish that the goods are related such that, if identified by confusingly similar marks, confusion as to source is likely.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, STRATFORD HOME ACCENTS, and registrant's mark, STRATFORD, their contemporaneous use on the goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

While our decision is not free from doubt, we resolve that doubt in favor of registrant and deny registration to applicant. It is well established that one who adopts a mark similar to the mark of another for the same or closely related goods or services does so at one's own peril, and any doubt as to likelihood of confusion must be resolved against the newcomer and in favor of the registrant. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed Cir. 1988); and *W.R.*

respect to the goods in International Class 20, it is unnecessary to consider these goods.

Serial No. 76393570

Grace & Co. v. Herbert J. Meyer Industries, Inc., 190 USPQ
308 (TTAB 1976).

Decision: The refusal under Section 2(d) of the
Trademark Act is affirmed as to the goods in all three
classes.